165-257

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 522

L. I. ROSENCRANS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MONTANA.

FILED MAY 14, 1896.

(16,298)

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1 In the Circuit Court of the United States, Ninth Circuit, District of Montana.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
L. I. ROSENCRANS, Defendant.

Be it remembered that on the eighteenth day of March, 1895, there was duly presented, filed, and recorded in the circuit court of the United States for the district of Montana, southern division, an indictment against said named defendant, L. I. Rosencrans; which said indictment is in the words and figures as follows, to wit:

UNITED STATES OF AMERICA,
District of Montana, } *ss:*

(Section 5467.)

In the Circuit Court of the United States, Ninth Judicial Circuit, District of Montana, of the Term of February, in the Year of Our Lord One Thousand Eight Hundred and Ninety-five.

The grand jurors of the United States of America duly empaneled, sworn, and charged to enquire within and for the district of Montana and true presentments make of all crimes committed against the laws of the United States within said district upon their oaths and affirmations do find and present that on the thirteenth day of July, in the year of our Lord one thousand eight hundred and ninety-four, in the State and district of Montana and within the jurisdiction of this court, L. I. Rosencrans (whose full name is to the grand jurors aforesaid unknown) being then and there a person employed in the postal service of the United States, to wit, a railway postal clerk in the Postal Department of the United States, and in the discharge of the duties of that position on the Great Northern railway between the station of Havre, in the county of Choteau, and
2 the station of Kalispell, in the county of Flathead, in said State and district, a certain registered letter having come into his possession as such railway postal clerk, and which was intended to be and then and there was being conveyed by United States mail, and which said registered letter had been deposited in the United States mail at the United States post-office at Sacramento, in the county of Sacramento, State of California, on the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and ninety-four, and directed to the American Tobacco Company, New York, N. Y., which said registered letter then and there contained twenty-two certificates of the American Tobacco Company of the aggregate value of two dollars and twenty cents ($2.20), lawful money of the United States (a more particular description of which said certificates is to the grand jurors aforesaid unknown), he, the said L. I. Rosencrans, did then and there unlawfully, wilfully, and feloniously destroy the said registered letter and the contents

thereof, which had come into his possession as aforesaid and which was intended to be conveyed by mail as aforesaid, and which said registered letter and the contents thereof were not owned by the said L. I. Rosencrans, but were the property of the person to whom the same was directed, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Second Count.

And the grand jurors aforesaid upon their oaths and affirmations aforesaid do further present that on the thirteenth day of July, in the year of our Lord one thousand eight hundred and ninety-four, in the State and district of Montana and within the jurisdiction of this court, L. I. Rosencrans (whose full name is to the grand jurors aforesaid unknown) being then and there a person employed in the postal service of the United States, to wit, a railway postal clerk in
the Postal Department of the United States, and in the dis-
3 charge of the duties of that position on the Great Northern
railway between the station of Havre, in the county of Choteau, and the station of Kalispell, in the county of Flathead, in said State and district, a certain registered letter having come into his possession as such railway postal clerk, and which was intended to be and then and there was being conveyed by the United States mail, and which said registered letter had been deposited in the United States mail at the United States post-office at Sacramento, in the county of Sacramento, State of California, on the thirtieth day of June, in the year of our Lord one thousand eight hundred and ninety-four, and directed to Wittwe Julie Schafer, Ehmann street, Nurnberg, Bayern, Germany, which said registered letter then and there contained a legal document of value (a more particular description of which said legal document is to the grand jurors aforesaid unknown), he, the said L. I. Rosencrans, did then and there unlawfully, feloniously, and wilfully destroy the said registered letter and the contents thereof, which had come into his possession as aforesaid and which was intended to be conveyed by mail as aforesaid, and which said registered letter and the contents thereof were not owned by said L. I. Rosencrans, but were the property of the person to whom the same were addressed and directed, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Third Count.

And the grand jurors aforesaid upon their oaths and affirmations aforesaid do further present that on the thirteenth day of July, in the year of our Lord one thousand eight hundred and ninety-four, in the State and district of Montana and within the jurisdiction of this court, L. I. Rosencrans (whose full name is to the grand jurors aforesaid unknown) being then and there a person employed in the postal service of the United States, to wit, a railway postal clerk in the Post Office Department of the United States, and in the discharge

of his duties of that position on the Great Northern railway
4 between the station of Havre, in the county of Choteau, and
the station of Kalispell, in the county of Flathead, in the State and district aforesaid, a certain registered letter having come into his possession as such railway postal clerk, and which was intended to be and then and was being conveyed by United States mail, and which said registered letter had been deposited in the mail at the United States post-office at Hart, Shasta county, State of California, on the twenty-seventh day of June, in the year of our Lord one thousand eight hundred and ninety-four, and directed to Mrs. Weightman, 16 Harcourt St., Workington, England, which said registered letter then and there contained a United States post-office money order (a more particular description of which is to the grand jurors aforesaid unknown), he, the said L. I. Rosencrans, did then and there unlawfully, wilfully, and feloniously destroy the said registered letter and the contents thereof, which had come into his possession as aforesaid and which was intended to be and was then and there being conveyed by United States mail as aforesaid, and which said registered letter and the contents thereof were not owned by said L. I. Rosencrans, but were the property of the person to whom the same was directed, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Fourth Count.

And the grand jurors aforesaid upon their oaths and affirmations aforesaid do further present that on the thirteenth day of July, in the year of our Lord one thousand eight hundred and ninety-four, in the State and district of Montana and within the jurisdiction of this court, L. I. Rosencrans (whose full name is to the grand jurors unknown) being then and there a person employed in the postal service of the United States, to wit, a railway postal clerk in the Postal Department of the United States, and in the discharge of the duties of that position on the Great Northern railway between the
station of Havre, in the county of Choteau, and the station
5 of Kalispell, in the county of Flathead, in said State of Mon-
tana, a certain registered letter having come into his possession as such railway postal clerk, and which was intended to be and was then and there being conveyed by United States mail, and which said registered letter had been deposited in the mail at the United States post-office at Sacramento, in the county of Sacramento, in the State of California, on the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and ninety-four, and directed to Mrs. Emilie Heistans Greitzer, Gasthans etzel b. Einsiedeln Ct. Schwizz, Schweizerland, which said registered letter contained a draft for fifty francs, D. O. Mills & Co., No. d.08250, on Paris, France (a more particular description of which is to the grand jurors aforesaid unknown), he, the said L. I. Rosencrans, did then and there unlawfully, wilfully, and feloniously destroy the said registered letter and the contents thereof, which

had come into his possession as aforesaid and which was intended to be and was then and there being conveyed by United States mail as aforesaid, and which said registered letter and the contents thereof were not owned by the said L. I. Rosencrans, but were the property of the person to whom the same was directed, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Fifth Count.

And the grand jurors aforesaid upon their oaths and affirmations aforesaid do further present that on the thirteenth day of July, in the year of our Lord one thousand eight hundred and ninety-four, in the State and district of Montana and within the jurisdiction of this court, L. I. Rosencrans (whose full name is to the grand jurors aforesaid unknown) being then and there a person employed in the postal service of the United States, to wit, a railway postal clerk in the Postal Department of the United States, and in the discharge of the duties of that position on the Great Northern railway between the station of Havre, in the county of Choteau, and 6 the station of Kalispell, in the county of Flathead, in said State and district, a certain registered letter having come into his possession as such railway postal clerk, and which was intended to be and then and there was being conveyed by United States mail, and which said registered letter had been deposited in the mail at the United States post-office at Benicia, Solano county, State of California, on the 28th day of June, in the year of our Lord one thousand eight hundred and ninety-four, and directed to Mrs. T. F. Condare, Poxos, Greece, which said registered letter contained a bill of exchange drawn by the Bank of California for three pounds on Messrs. N. M. Rothschild & Sons, London, # 48486, in favor of Theodore G. Condare (a more particular description of which is to the grand jurors aforesaid unknown), he, the said L. I. Rosencrans, did then and there wilfully, unlawfully, and feloniously destroy the said registered letter and the contents thereof, which had come into his possession as aforesaid and which was intended to be and was then and there being conveyed by United States mail as aforesaid, and which said registered letter and the contents thereof were not owned by the said L. I. Rosencrans, but were the property of the person to whom the same was directed, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

PRESTON H. LESLIE,
United States Attorney, District of Montana.

Witnesses for the United States: C. L. Wayland, Wm. Archer, W. W. Ernest, Charles Trought, W. A. Robinson, Byron Dieffenbach, Jacob B. Aley.

(Endorsed:) (Title of court.) (Title of cause.) Indictment. A true bill. John G. Hammer, foreman. Preston H. Leslie, United

States attorney, district of Montana. Witnesses: C. L. Wayland, Wm. Archer, W. W. Ernest, Charles Trought, W. A. Robinson, Jacob B. Aley, and Byron Dieffenbach. Presented by the grand jury in open court, by their foreman and in their presence, and filed this 18th day of March, 1895. Geo. W. Sproule, clerk.

Also endorsed: No. 352. Filed March 30th, 1895. Geo. W. Sproule, clerk.

7 And thereafter, to wit, on the 18th day of March, A. D. 1895, a bench warrant was duly issued in said cause; which said bench warrant, together with the return of the United States marshal thereon, is in the words and figures as follows, to wit:

UNITED STATES OF AMERICA, } ss:
District of Montana, }

To the marshal of the United States of America for the southern division, district of Montana, and his deputies or any or either of them, Greeting:

Whereas at a circuit court of the United States of America for the southern division, district of Montana, begun and held at the city of Butte, within and for the district aforesaid, on the 18th day of March, in the year of our Lord one thousand eight hundred and ninety-five, the grand jurors in and for the said district brought into the said court a true bill of indictment against L. I. Rosencrans for unlawfully opening and destroying letters being conveyed by mail, he, said defendant, being then and there a railway postal clerk and intrusted with mail containing said letters so opened and destroyed, as by the said indictment now remaining on file and of record in said court will more fully appear, to which indictment the said L. I. Rosencrans has not yet appeared or pleaded:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said L. I. Rosencrans and him bring before the said court, at the United States circuit court room, in the city of Butte, to answer the indictment aforesaid.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said [SEAL.] circuit court, this 18th day of March, in the year of our Lord one thousand eight hundred and ninety-five, and of our Independence the 119th.

GEO. W. SPROULE, *Clerk.*

8 UNITED STATES OF AMERICA, } ss:
District of Montana, }

MARSHAL'S OFFICE.

In obedience to this writ I arrested the within-named L. I. Rosencrans at Helena, Montana, March 19th, 1895, and took him before J. W. Kinsley, a U. S. commissioner of the circuit court of the United States at Helena, Montana, March 19th, 1895, where the said

L. I. Rosencrans furnished bonds for his appearance at the next regular term of court. Whereupon I released him.

Butte, Mont., March 20, 1895.

WM. McDERMOTT,
U. S. Marshal,
By M. J. HALEY, *Deputy.*

Mileage, 9.00.
Fee arresting, 4.00.

(Endorsed:) No. 31. United States circuit court, district of Montana, southern division. The United States of America *vs.* L. I. Rosencrans. Bench warrant. Bail fixed at $1,500.00. Filed March 20, 1895. Geo. W. Sproule, clerk.

Also endorsed: No. 352. Filed Mar. 30, 1895. Geo. W. Sproule, clerk.

And thereafter, to wit, on the 26th day of March, A. D. 1895, the following proceedings were had and entered of record herein; which said proceedings are in *in* the words and figures as follows, to wit:

United States Circuit Court, District of Montana, Southern Division, February Term, A. D. 1895, Tuesday, the 26th Day of March, A. D. 1895, 15th Day of said Term.

Court convened pursuant to adjournment.

9 Present: Honorable Hiram Knowles, United States district judge for the district of Montana.

UNITED STATES
vs.
L. I. ROSENCRANS. } No. 31.

On motion of Assistant United States Attorney Geo. F. Shelton, it is ordered that the indictment in this cause be remitted to the circuit court of the United States for the district of Montana, holding its sessions at Helena, Lewis and Clarke county, Montana.

And thereafter, to wit, on the 27th day of April, A. D. 1895, the following proceedings were had and entered of record herein; which said proceedings are in the words and figures as follows, to wit:

(Title of Court and Cause.)

April Term, A. D. 1895.

SATURDAY, *the 27th Day of April*, 1895.

Defendant with his counsel present in court; and thereupon defendant, being arraigned, answered that his true name is L. I. Rosencrans; and thereupon defendant waived the reading of the indictment and defendant granted until Monday, April 29th, 1895, to enter his plea.

And thereafter, to wit, on the 29th day of April, A. D. 1895, the following further proceedings were had and entered of record herein in the words and figures as follows, to wit:

(Title of Court and Cause.)

April Term, 1895.

MONDAY, *the 29th Day of April*, 1895.

Defendant present in court with his counsel; and thereupon defendant pleaded that he is not guilty, and said plea of not guilty so ordered entered and defendant granted leave to withdraw said plea hereafter if desired.

Cause thereupon ordered passed.

10 And thereafter, to wit, on the 31st day of October, A. D. 1895, the following further proceedings were had and entered of record herein; which said proceedings are in the words and figures as follows, to wit:

(Title of Court and Cause.)

April Term, 1895.

THURSDAY, *the 31st Day of October*, 1895.

Ordered that this cause be set for trial November 30th, 1895, at 10 a. m.

And thereafter, to wit, on the 5th day of December, A. D. 1895, the following proceedings were had and entered of record herein; which said proceedings are in the words and figures as follows, to wit:

(Title of Court and Cause.)

November Term, 1895.

THURSDAY, *the 5th Day of December*, 1895.

On motion of A. J. Craven, Esq., name of A. J. Craven entered as counsel for defendant; and thereupon trial of cause ordered continued until December 6th, 1895, at 10 a. m.

And thereafter, to wit, on the 6th day of December, 1895, the following further proceedings were had and entered of record herein in the words and figures as follows, to wit:

(Title of Court and Cause.)

November Term, 1895.

FRIDAY, *the Sixth Day of December*, 1895.

Defendant with his counsel, W. F. Sanders and A. J. Craven, present in court and U. S. attorney present; and thereupon the following-name- persons were duly empanneled as a jury, viz., A.

Beckney, D. H. Weston, W. M. Holbrook, J. T. Laws, M. Prosser, J. W. Anderson, R. Stein, J. Bonner, P. A. Ginchereau, P. S. Kelly, H. J. Hilmer, and F. H. Fowles; and thereupon, before said 11 jury was accepted and sworn, the defendants, having exercised three peremptory challenges, claimed the right to peremptorily challenge five persons; and thereupon defendant peremptorily challenged F. H. Fowles; and thereupon challenge denied; to which ruling defendant then and there duly excepted and exception noted; and thereupon said persons were duly sworn to try said cause; and thereupon Chas. Trought, Wm. Sanders, Byron Diffenbach, Wm. Archer, and E. T. Murphy were duly sworn and examined as witnesses for the prosecution; and thereupon further trial of cause ordered continued until December 7th, 1895, at 10 a. m.

And said cause being proceeded with on the 6th, 7, 9, and 10th days of December, 1895, said cause was thereupon, on the 10th day of December, 1895, given to the jury after argument of counsel and instructions of the court.

And thereafter, to wit, on the 11th day of December, 1895, the following further proceedings were had and entered of record herein in the words and figures as follows, to wit:

(Title of Court and Cause.)

November Term, 1895.

WEDNESDAY, *the* 11*th Day of December*, 1895.

Defendant and respective counsel present in court; and thereupon the jury in said cause, having agreed upon their verdict, were brought into court, and, being called, all answered to their names as present; and thereupon said jury rendered their verdict, which was filed and ordered entered as follows, to wit:

"We, the jury, find the defendant guilty as charged in count number four of said indictment, and not guilty as charged in the remaining counts thereof; and we, the jury, recommend the defendant to the mercy of the court.

F. H. FOWLES, *Foreman.*"

And thereafter counsel for defendant gave notice that they would file a motion for a new trial and arrest of judgment, and defendant thereupon ordered released on bond heretofore filed and approved.

12 And thereafter, to wit, on the 11th day of December, 1895, the verdict was filed herein; which said verdict is in the words and figures as follows, to wit:

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

UNITED STATES OF AMERICA
vs.
L. I. ROSENCRANS.

We, the jury, find the defendant guilty as charged in count four of said indictment, and not guilty as charged in the remaining counts thereof; and we, the jury, recommend the defendant to the mercy of the court.

F. H. FOWLES, *Foreman.*

(Endorsed:) No. 352. Verdict. Filed Dec. 11, 1895. Geo. W. Sproule, clerk.

And thereafter, to wit, on the 16th day of January, 1896, the defendant filed his bill of exceptions herein; which said bill of exceptions is in words and figures as follows, to wit:

13 In the Circuit Court of the United States, Ninth Circuit, District of Montana.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
L. I. ROSENCRANS, Defendant.

Bill of Exceptions.

Be it remembered that heretofore, to wit, on the 30th day of March, 1895, there was filed in this court an indictment in the words and figures following—that is to say:

UNITED STATES OF AMERICA, } *ss:*
District of Montana,

(Section 5467.)

In the Circuit Court of the United States, Ninth Judicial Circuit, District of Montana, of the Term of February, in the Year of Our Lord One Thousand Eight Hundred and Ninety-five.

The grand jurors of the United States of America duly empaneled, sworn, and charged to enquire within and for the district of Montana and true presentments make of all crimes committed against the laws of the United States within said district upon their oaths and affirmations do find and present that on the thirteenth day of July, in the year of our Lord one thousand eight hundred and ninety-four, in the State and district of Montana and within the jurisdiction of this court, L. I. Rosencrans (whose full name is to the grand jurors aforesaid unknown) being then and there a person employed in the postal service of the United States, to wit, a railway postal clerk in the Postal Department of the United States, and in the discharge of the duties of that position on the Great Northern railway between the station of Havre, in the county of Choteau, and the 14 station of Kalispell, in the county of Flathead, in said State and district, a certain registered letter having come into his possession as such railway postal clerk, and which was intended to be and then and there was being conveyed by United States mail, and which said registered letter had been deposited in the United States mail at the United States post-office at Sacramento, in the county of Sacramento, State of California, on the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and ninety-four, and directed to the American Tobacco Company, New York, N. Y., which said registered letter then and there contained twenty-two certificates of the American Tobacco Company of the aggregate value of two dollars and twenty cents ($2.20), lawful money of the United States (a more particular description of which said certificates is to the grand jurors aforesaid unknown), he, the said L. I. Rosencrans, did then and there unlawfully, wilfully, and feloniously destroy the said registered letter and the contents thereof, which had come into his possession as aforesaid and which was intended to be conveyed by mail as aforesaid, and which said registered letter and the contents thereof were not owned by the said L. I. Rosencrans, but were the property of the person to whom the same was directed, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Second Count.

And the grand jurors aforesaid upon their oaths and affirmations aforesaid do further present that on the thirteenth day of July, in the year of our Lord one thousand eight hundred and ninety-four, in the State and district of Montana and within the jurisdiction of this court, L. I. Rosencrans (whose full name is to the grand jurors aforesaid unknown) being then and there a person employed in the postal service of the United States, to wit, a railway postal clerk in the Postal Department of the United States, and in the discharge of the duties of that position on the Great Northern railway 15 between the station of Havre, in the county of Choteau, and the station of Kalispell, in the county of Flathead, in said State and district, a certain registered letter having come into his possession as such railway postal clerk, and which was intended to be and then and there was being conveyed by United States mail, and which said registered letter had been deposited in the United States mail at the United States post-office at Sacramento, in the county of Sacramento, State of California, on the thirtieth day of June, in the year of our Lord one thousand eight hundred and ninety-four, and directed to Wittwe Julie Schafer, Ehmann street, Nurnberg, Bayern, Germany, which said registered letter then and there contained a legal document of value (a more particular description of which said legal document is to the grand jurors aforesaid unknown), he, the said L. I. Rosencrans, did then and there unlawfully, feloniously, and wilfully destroy the said registered letter and the contents thereof, which had come into his possession as aforesaid, and which was intended to be conveyed by mail as aforesaid and which said registered letter and the contents thereof were not owned by said L. I. Rosencrans, but were the property of the person to whom the same were addressed and directed, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Third Count.

And the grand jurors aforesaid upon their oaths and affirmations aforesaid do further present that on the thirteenth day of July, in the year of our Lord one thousand eight hundred and ninety-four, in the State and district of Montana and within the jurisdiction of this court, L. I. Rosencrans (whose full name is to the grand jurors aforesaid unknown) being then and there a person employed in the postal service of the United States, to wit, a railway postal clerk in the Post Office Department of the United States, and in the discharge of the duties of that position on the Great Northern
16 railway between the station of Havre, in the county of Choteau, and the station of Kalispell, in the county of Flathead, in the State and district aforesaid, a certain registered letter having come into his possession as such railway postal clerk, and which was intended to be and then and there was being conveyed by United States mail, and which said registered letter had been deposited in the mail at the United States post-office at Hart, Shasta county, State of California, on the twenty-seventh day of June, in the year of our Lord one thousand eight hundred and ninety-four, and directed to Mrs. Weightman, 16 Harcourt St., Workington, England, which said registered letter then and there contained a United States post-office money order (a more particular description of which is to the grand jurors aforesaid unknown), he, the said L. I. Rosencrans, did then and there unlawfully, wilfully, and feloniously destroy the said registered letter and the contents thereof, which had come into his possession as aforesaid and which was intended to be and was then and there being conveyed by United States mail as aforesaid, and which said registered letter and the contents thereof were not owned by said L. I. Rosencrans, but were the property of the person to whom the same was directed, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Fourth Count.

And the grand jurors aforesaid upon their oaths and affirmations aforesaid do further present that on the thirteenth day of July, in the year of our Lord one thousand eight hundred and ninety-four, in the State and district of Montana and within the jurisdiction of this court, L. I. Rosencrans (whose full name is to the grand jurors unknown) being then and there a person employed in the postal service of the United States, to wit, a railway postal clerk in the Postal Department of the United States, and in the discharge of the duties of that position on the Great Northern railway between the station of Havre, in the county of Choteau, and the station 17 of Kalispell, in the county of Flathead, in said State of Montana, a certain registered letter having come into his possession as such railway postal clerk, and which was intended to be and was then and there being conveyed by United States mail, and which said registered letter had been deposited in the mail at the United States post-office at Sacramento, in the county of Sacramento, in the State of California, on the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and ninety-four, and directed to Mrs. Emilie Heistans Greitzer, Gasthans etzel b. Einsiedeln Ct. Schwizz, Schweizerland, which said registered letter contained a draft for fifty francs, D. O. Mills & Co., No. d. 08250, on Paris, France (a more particular description of which is to the grand jurors aforesaid unknown), he, the said L. I. Rosencrans, did then and there unlawfully, wilfully, and feloniously destroy the said registered letter and the contents thereof, which had come into his possession as aforesaid and which was intended to be and was then and there being conveyed by United States mail as aforesaid, and which said registered letter and the contents thereof were not owned by the said L. I. Rosencrans, but were the property of the person to whom the same was directed, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Fifth Count.

And the grand jurors aforesaid upon their oaths and affirmations aforesaid do further present that on the thirteenth day of July, in the year of our Lord one thousand eight hundred and ninety-four, in the State and district of Montana and within the jurisdiction of this court, L. I. Rosencrans (whose full name is to the grand jurors aforesaid unknown) being then and there a person employed in the postal service of the United States, to wit, a railway postal clerk in the Postal Department of the United States, and in the discharge of the duties of that position on the Great Northern railway between the station of Havre, in the county of Choteau, and the station 18 of Kalispell, in the county of Flathead, in said State and district, a certain registered letter having come into his possession as such railway postal clerk, and which was intended to be and then and there was being conveyed by United States mail, and which said registered letter had been deposited in the mail at the United States post-office at Benicia, Solano county, State of California, on the 28th day of June, in the year of our Lord one thousand eight hundred and ninety-four, and directed to Mrs. T. F. Condare, Poxos, Greece, which said registered letter contained a bill of exchange drawn by the Bank of California for three pounds on Messrs. N. M. Rothschild & Sons, London, #48486, in favor of Theodora G. Condare (a more particular description of which is to the grand jurors aforesaid unknown), he, the said L. I. Rosencrans, did then and there wilfully, unlawfully, and feloniously destroy the said registered letter and the contents thereof, which had come into his possession as aforesaid and which was intended to be and was then and there being conveyed by United States mail as aforesaid, and which said registered letter and the contents thereof were not owned by the said L. I. Rosencrans, but were the property of the person to whom the same was directed, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

PRESTON H. LESLIE,
United States Attorney, District of Montana.

Witnesses for the United States: C. L. Wayland, Wm. Archer, W. W. Ernest, Charles Trought, W. A. Robinson, Byron Diffenbach, Jacob B. Aley.

(Endorsed:) (Title of court.) (Title of cause.) Indictment. A true bill. John G. Hammer, foreman. Preston H. Leslie, United States attorney, district of Montana. Witnesses: C. L. Wayland, Wm. Archer, W. W. Ernest, Charles Trought, W. A. Robinson, Jacob B. Aley, and Byron Dieffenbach. Presented by the grand jury in open court, by their foreman and in their presence, and filed this 18th day of March, 1895. Geo. W. Sproule, clerk.

19 And upon the said 30th day of March, 1895, the following entry was made upon the criminal register of actions of this court, to wit: United States *vs.* L. I. Rosencrans; March 30, 1895; filed indictment, remitted from so. div.

And thereafter and on the 29th day of April, 1895, the said defendant was arraigned on the said indictment, and for his plea thereto said he was not guilty in manner and form as he stood charged therein.

And thereafter and on the 6th day of December, 1895, this cause came on for trial, and the court summoning divers and sundry men pursuant to law to serve as jurymen in said court, and during the progress of the impanneling of said jury the defendant, after having exercised three certain preemptory challenges, peremptorily challenged one F. H. Fowles; which said challenge was overruled and denied by the court for the reason that the said defendant had already exercised three peremptory challenges, and the court would not and did not admit the peremptory challenge of the said defendant or permit him to excuse the said F. H. Fowles from service on said jury for that reason; to which ruling of the court the defendant then and there duly excepted.

And thereupon, the jury being empanneled and sworn, the United States, to maintain the issues on its part, introduced and had sworn as a witness one Charles Trought, a witness of lawful age, who, being first duly sworn, stated that his name was Charles Trought; that he was more than twenty-five years of age and resided in which I wished to place on the letter in my little pocket memorandum book that I carried at the time, and the man that desired me to send that money gave me it, which pocket memorandum book is now in California. It may be at my place. The registry receipt stub does not show the address in full. The registry clerk 23 omitted some essential parts of it; at least that is what I suppose. Mr. Leak was the man that made the last memorandum. I put the address on the letter, getting it from the little memorandum book I had in my vest pocket.

And the United States further offered a written statement signed by the defendant, which was admitted in evidence, in which he says: "I took the contents from the pouch numbered P. 140, rotary number 79, for New York, N. Y., and then locked the pouch, taking a receipt from Clerk Archer for P. 140–80. There were five registered package envelopes taken out by me from the pouch, including a bill for the same; one draft or check for $50, a money order, one package of tobacco certificates, and three foreign documents, which I burned, destroying them." No other or further evidence was given describing the letter mentioned in the fourth count of the indictment, nor was there any other or further testimony given to the jury concerning the draft or the bank upon which it was drawn than that heretofore recited.

And thereupon the case was argued to the jury by counsel, and the jury was instructed by the court and retired to consider of their verdict, and afterwards, to wit, on the 11th day of December, 1895, returned into court with their verdict as follows:

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

UNITED STATES OF AMERICA
vs.
L. I. ROSENCRANS.

We, the jury, find the defendant guilty as charged in count number four of said indictment and not guilty as charged in the remaining counts thereof; and we, the jury, recommend the defendant to the mercy of the court.

F. H. FOWLES, *Foreman.*

And thereafter, to wit, on the 12th day of December, 1895, said defendant filed his motion for a new trial in this court as follows, to wit:

24 In the Circuit Court of the United States, Ninth Circuit, in and for the District of Montana.

THE UNITED STATES, Plaintiff,
vs. } Motion.
L. I. ROSENCRANS, Defendant.

And now comes the defendant and moves the court to set aside the verdict in this case and for a new trial thereof:

First. Because the said verdict is contrary to the evidence.

Second. Because the said verdict is not sustained by the evidence, in this, that it is not established that the defendant was guilty of the facts therein alleged against him.

Third. It was not proven that the letter mentioned in the fourth count of the indictment contained a draft on Paris, France, as herein alleged.

Fourth. It was not proven that the said letter was addressed as therein alleged, in this, that it was not proven that the said address contained the word "Gasthans," as in said fourth count set forth.

Fifth. Because the said defendant was not permitted to challenge the jurors, which by law he was entitled to challenge, in this, that a challenge desired and attempted to be exercised above the third was denied by the court.

Sixth. Because the said verdict is contrary to law.

Seventh. Because said verdict is contrary to the instructions of the court.

W. F. SANDERS,
A. J. CRAVEN,
Attorneys for Defendant.

(Endorsed:) (Title of court.) (Title of cause.) Motion to set verdict aside and for new trial. Filed Dec. 12, 1895. Geo. W. Sproule, clerk.

25 Which said motion for a new trial came on to be heard on the 8th day of January, 1896, and thereafter and on the 13th day of January, 1896, the court overruled the said motion for a new trial; to which ruling defendant then and there excepted.

And thereafter and on the 16th day of January, 1896, said defendant filed his motion in arrest of judgment; which said motion is in the words and figures following, to wit:

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
L. I. ROSENCRANS, Defendant.

Motion in Arrest of Judgment.

And now comes the defendant and moves the court to arrest judgment on each and every count of the indictment herein upon which the defendant herein was convicted, because the facts therein stated do not constitute an offense against the laws and statutes of the United States.

2. Because it does not appear by the fourth count in the indictment herein where, when, nor by what grand jury the said indictment was found.

3. Because the said indictment was not found by any competent grand jury.

4. Because it is not alleged in the 4th count of said indictment that said offense was committed within the jurisdiction of this court.

5. Because said indictment was not found by any grand jury of the division in which the offense is alleged to have been committed, or in which the said indictment was tried.

26 6. Because it does not appear in said fourth count of said indictment that the defendant was a person employed in any department of the postal service of the United States.

7. Because the alleged draft in said fourth count set forth is not described according to its tenor.

8. Because the said draft is not described in said 4th count according to its legal effect.

9. Because the said draft attempted to be described in said 4th count of said indictment is not described with sufficient particularity:

a. It is not alleged that it was a draft for the payment of money.

b. It is not alleged that it was drawn by D. O. Mills & Co., or any other firm, corporation, or person.

c. It is not alleged in said 4th count that the number of said draft was number D. 08250, or any other number or series.

d. The drawee thereof is not described.

e. It is not alleged in said 4th count that the registered letter at the time of the alleged destruction thereof contained any draft whatever.

10. It does not appear from said 4th count of said indictment in what State or country the said county of Choteau was.

11. It does not appear from the 4th count of said indictment that the Great Northern railway between the station of Havre and the station of Kalispell was within the State of Montana.

12. It is not alleged in said 4th count of said indictment that the said registered letter did come into the possession of the defendant.

13. Because said letter mentioned in said 4th count of said indictment is not sufficiently described.

14. It does not appear in the 4th count of said indictment nor from the proof in the case that the letter mentioned in said 4th count then or ever contained a draft.

27 15. Because it does not appear from said 4th count of said indictment whether Paris France was an individual or a corporation.

16. Because it does not appear in said 4th count of said indictment that the said letter had not been delivered to the person to whom it was directed.

17. Because the instrument alleged in the fourth count of the said indictment to have been a draft is not described with sufficient certainty so that an acquittal or a conviction of the offense therein charged could be plead in bar to another prosecution for the same act or transaction.

18. Because the said indictment does not charge an offense under the statutes of the United States against the said defendant for the

reason that said indictment does not allege with sufficient certainty and particularity an offense against the laws of the United States.

W. F. SANDERS,
A. J. CRAVEN,
Attorneys for Def't.

And he, said defendant, prays that this his bill of exceptions be signed, sealed, settled, and allowed by the court and made a part of the records, which is done accordingly this 30th day of January, 1896.

HIRAM KNOWLES, *Judge.*

(Endorsed :) (Title of court.) (Title of cause.) Bill of exceptions. Filed Jan. 16, 1896. Geo. W. Sproule, clerk.

And thereafter, to wit, on the 29th day of January, 1896, the following proceedings were had and entered of record herein in the words and figures as follows, to wit:

(Title of Court and Cause.)

November Term, 1895.

WEDNESDAY, *the 29th Day of January*, 1896.

28 UNITED STATES
vs.
L. I. ROSENCRANS.

Motion in arrest of judgment herein ordered set for hearing Jan. 30th, 1896, at 10 a. m.

And thereafter, to wit, on the 30th day of January, 1896, the following further proceedings were had and entered of record herein in the words and figures as follows, to wit:

U. S. Circuit Court, Helena, Montana, November Term, 1895.

THURSDAY, *the 30th Day of January*, 1896.

Present: Honorable Hiram Knowles, United States district judge for the district of Montana.

THE UNITED STATES
vs. No. 352.
L. I. ROSENCRANS.

This cause came on regularly for hearing this day on motion of defendant in arrest of judgment, and, after argument of counsel, motion submitted to the court, and, after due consideration, motion overruled; bill of exceptions presented, signed, and allowed.

And thereupon, said defendant, with his counsel, being present in court, the judgment and sentence of the court was rendered and entered as follows:

29 In the Circuit Court of the United States, Ninth Judicial Circuit, District of Montana.

THE UNITED STATES OF AMERICA
vs.
L. I. ROSENCRANS.

The United States attorney, with the defendant and his counsel, present in court. The defendant was duly informed by the court of the nature of the charge against him for the crime of unlawfully, wilfully, and feloniously destroying a registered letter containing a draft for fifty francs, which said registered letter came into his possession while employed and acting as a railway postal clerk in the Postal Department of the United States, committed on the thirteenth day of July, A. D. 1894, in the district of Montana; of his indictment, arraignment, and plea of not guilty of the offense charged in the indictment; of his trial and the verdict of the jury on the 11th day of December, 1895:

"We, the jury, find the defendant guilty as charged in count number four of said indictment and not guilty as charged in the remaining counts thereof, and we, the jury, recommend the defendant to the mercy of the court.

F. H. FOWLES, *Foreman*."

And the defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him; to which he replied that he had none; and no sufficient cause being shown or appearing to the court, thereupon the court rendered its judgment as follows: "That whereas the said L. I. Rosencrans having been duly convicted in this court of the crime of unlawfully, wilfully, and feloniously destroying a registered letter containing a draft, which said letter came into his possession when employed and acting as a railway postal clerk in the Postal Department of the United States, it is therefore ordered, adjudged, and decreed that the said L. I. Rosencrans be confined in the penitentiary, at Deer Lodge, in the State and district of Montana, at hard labor, for the term of one year."

30 Defendant was thereupon ordered admitted to bail in the sum of fifteen hundred dollars pending appeal in said cause.

Entered January 30th, 1896.

GEO. W. SPROULE, *Clerk*.

And thereafter, to wit, on the first day of February, 1896, the following proceedings were had and entered of record herein in the words and figures as follows, to wit:

(Title of Court and Cause.)

November Term, 1895.

SATURDAY, *the First Day of February*, 1896.

In open court.

UNITED STATES }
vs.
L. I. ROSENCRANS. }

Bill of exceptions presented, allowed, and signed; assignment of errors and petition for writ of error filed; writ of error allowed and bond approved and filed.

And thereafter, to wit, on said first day of February, 1896, the defendant filed his bill of exceptions herein; which said bill of exceptions is in words and figures as follows, to wit:

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

THE UNITED STATES OF AMERICA, Plaintiff, }
vs.
L. I. ROSENCRANS, Defendant. }

Bill of Exceptions.

Be it further remembered that heretofore, to wit, on the 30th day of January, 1896, the motion of defendant in arrest of judgment heretofore filed in the above-entitled action on the 16th day of January, 1896, and referred to in a certain bill of exceptions filed on the 16th day of January, 1896, came on to be heard, said motion in arrest of judgment being in the words and figures following, to wit:

31 In the Circuit Court of the United States, Ninth Circuit, District of Montana.

THE UNITED STATES OF AMERICA, Plaintiffs, }
vs.
L. I. ROSENCRANS, Defendant. }

Motion in Arrest of Judgment.

And now comes the defendant and moves the court to arrest judgment on each and every count of the indictment herein upon which the defendant herein was convicted, because the facts therein stated do not constitute an offense against the laws and statutes of the United States.

2. Because it does not appear by the fourth count in the indictment herein where, when, nor by what grand jury the said indictment was found.

3. Because the said indictment was not found by any competent grand jury.

4. Because it is not alleged in the 4th count of said indictment that said offense was committed within the jurisdiction of this court.

5. Because said indictment was not found by any grand jury of the division in which the offense is alleged to have been committed or in which the said indictment was tried.

6. Because it does not appear in said fourth count of said indictment that the defendant was a person employed in any department of the postal service of the United States.

7. Because the alleged draft in said fourth count set forth is not described according to its tenor.

8. Because the said draft is not described in said 4th count according to its legal effect.

32 9. Because the said draft attempted to be described in said 4th count of said indictment is not described with sufficient particularity:

a. It is not alleged that it was a draft for the payment of money.

b. It is not alleged that it was drawn by D. O. Mills & Co. or any other firm, corporation, or person.

c. It is not alleged in said 4th count that the number of said draft was number D. 08250 or any other number or series.

d. The drawee thereof is not described.

e. It is not alleged in said 4th count that the registered letter at the time of the alleged destruction thereof contained any draft whatever.

10. It does not appear from said 4th count of said indictment in what State or country the said county of Choteau was.

11. It does not appear from the 4th count of said indictment that the Great Northern railway between the station of Havre and the station of Kalispell was within the State of Montana.

12. It is not alleged in said 4th count of said indictment that the said registered letter did not come into the possession of the defendant.

13. Because said letter mentioned in said 4th count of said indictment is not sufficiently described.

14. It does not appear in the 4th count of said indictmeny nor from the proof in the case that the letter mentioned in said 4th count then or ever contained a draft.

15. Because it does not appear from said 4th count of said indictment whether Paris France was an individual or a corporation.

16. Because it does not appear in said 4th count of said indictment that the said letter had not been delivered to the person to whom it was directed.

17. Because the instrument alleged in the fourth count of
33 the said indictment to have been a draft is not described with sufficient certainty, so that an acquittal or a conviction of the offense therein charged could be plead in bar to another prosecution for the same act or transaction.

18. Because the said indictment does not charge an offense under

the statutes of the United States against the said defendant for the reason that said indictment does not allege with sufficient certainty and particularity an offense against the laws of the United States.

W. F. SANDERS,
A. J. CRAVEN,
Attorneys for Def't.

Which foregoing motion in arrest of judgment was argued to the court and submitted for its determination and decision; which motion was by the court overruled, and to which ruling of the court in overruling the said motion in arrest of judgment the defendant then and there duly excepted.

And thereafter, on the 30th day of January, 1896, the defendant was sentenced by the court to be confined in the penitentiary at Deer Lodge, in the State and district of Montana, at hard labor for the term of one year in the manner following, to wit:

34 In the Circuit Court of the United States, Ninth Judicial Circuit, District of Montana.

The United States of America
vs.
L. I. Rosencrans.

The United States attorney, with the defendant and his counsel, present in court. The defendant was duly informed by the court of the nature of the charge against him for the crime of unlawfully, wilfully, and feloniously destroying a registered letter containing a draft for fifty francs, which said registered letter came into his possession while employed and acting as a railway postal clerk in the Postal Department of the United States, committed on the thirteenth day of July, A. D. 1895, in the district of Montana; of his indictment, arraignment, and plea of not guilty of the offense charged in the indictment; of his trial and the verdict of the jury on the 11th day of December, 1895:

"We, the jury, find the defendant guilty as charged in count number four of said indictment and not guilty as charged in the remaining counts thereof; and we, the jury, recommend the defendant to the mercy of the court.

F. H. FOWLES, *Foreman.*"

And the defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him; to which he replied that he had none; and no sufficient cause being shown or appearing to the court, thereupon the court rendered its judgment as follows: "That whereas the said L. I. Rosencrans having been duly convicted in this court of the crime of unlawfully, wilfully, and feloniously destroying a registered letter containing a draft, which said letter came into his possession when employed and acting as a railway postal clerk in the Postal Department of the

United States, it is therefore ordered, adjudged, and decreed that the said L. I. Rosencrans be confined in the penitentiary at Deer Lodge, in the State and district of Montana, at hard labor for the term of one year.

35 Defendant was thereupon ordered admitted to bail in the sum of fifteen hundred dollars pending appeal in said cause, the bond on appeal to be filed on February 3rd, 1896.

To which action of the court in sentencing the said defendant the defendant then and there duly excepted, and said defendant now presents this his bill of exceptions and asks that the same be signed, settled, and allowed, which is done accordingly this 1st day of February, 1896.

HIRAM KNOWLES, *Judge.*

(Endorsed:) (Title of court.) (Title of cause.) Bill of exceptions. Filed Feb. 1st, 1896. Geo. W. Sproule, clerk.

And thereafter, to wit, on the said first day of February, 1896, an assignment of errors was filed herein; which said assignment of errors is in words and figures as follows, to wit:

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
L. I. ROSENCRANS, Defendant.

Assignment of Errors.

Comes now the defendant in the above-entitled action, in connection with his petition for a writ of error, and makes the following assignment of errors, which he avers occurred upon the trial of the case and in the rendition of the judgment herein, to wit:

1. Because the grand jury had no jurisdiction to present the indictment.

2. Because the indictment did not state whether it was 36 found by the grand jury of the district of Montana, sitting at Helena, in said district, or at Butte, in said district.

3. The court erred in denying and overruling defendant's motion in arrest of judgment, for that the count in the indictment upon which the jury found the defendant guilty does not state facts sufficient to constitute an offense against the laws of the United States.

4. Because the contents of the letter set forth in the fourth count of the indictment was not proven as therein alleged.

W. F. SANDERS,
A. J. CRAVEN,
Attorneys for Defendant.

(Endorsed:) (Title of court.) (Title of cause.) Assignment of errors. Filed Feb. 1, 1896. Geo. W. Sproule, clerk.

And thereafter, to wit, on the 1st day of February, 1896, the defendant filed his petition for a writ of error herein; which said petition is in words and figures as follows, to wit:

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
L. I. ROSENCRANS, Defendant.

Now comes L. I. Rosencrans, the defendant herein, and says that on or about the 30th day of January, 1896, this court entered a judgment herein against him and sentenced him to imprisonment for the term of one year, in which judgment and the proceedings had prior thereto defendant contends certain errors were committed to the prejudice of this defendant, all of which will more fully appear from the assignment of errors which is filed with this petition.

Wherefore this defendant prays that a writ of error may issue in his behalf to the Supreme Court of the United States for the 37 correction of the errors so complained of, and that the transcript of the record, papers, and proceedings in this case, duly authenticated, may be sent to said Supreme Court.

W. F. SANDERS,
A. J. CRAVEN,
Attorneys for Defendant.

(Endorsed:) (Title of court.) (Title of cause.) Petition for writ of error. Filed Feb. 1, 1896. Geo. W. Sproule, clerk.

And thereafter, to wit, on the 1st day of February, 1896, an order was filed and entered in open court herein allowing writ of error; which said order is in words and figures as follows, to wit:

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
L. I. ROSENCRANS, Defendant.

This first day of February, A. D. 1896, came the defendant, by his attorneys, and filed herein and presented to the court his petition praying for the allowance of a writ of error intended to be urged by him; praying also that a transcript of the records, proceedings, and papers upon which the judgment was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises; in consideration whereof this court does allow the writ of error upon the defendant giving bond according to law in the sum of fifteen hundred dollars ($1,500); which said bond shall operate as a supersedeas.

HIRAM KNOWLES, *Judge.*

38 (Endorsed:) (Title of court.) (Title of cause.) Order allowing writ of error. Filed Feb. 1, 1896. Geo. W. Sproule, clerk.

And thereafter, to wit, on said first day of February, 1896, a writ of error was issued herein; which said writ of error is as follows, to wit:

39 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States, ninth circuit, district of Montana, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between United States of America, plaintiff and defendant in error, and L. I. Rosencrans, defendant and plaintiff in error, a manifest error hath happened, to the great damage of the said L. I. Rosencrans, as by his complaint appears, and it being fit that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, in the city of Washington, D. C., together with this writ, so that you have the same at said Supreme Court of the United States on the second day of April next, in the said Supreme Court to be there and then held, that, the record and proceedings aforesaid be- inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 1st day of February, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States the one hundred and 20th.

GEO. W. SPROULE, *Clerk.*

The above writ of error is hereby allowed.

[Seal United States Circuit Court, District of Montana, 1890.]

HIRAM KNOWLES,
U. S. Dist. Judge.

40 [Endorsed:] United States Supreme Court. United States of America, pl'ff & def't in error, *vs.* L I Rosencrans, def't & pl'ff in error. Writ of error. Filed Feb. 1st, 1896. Geo. W. Sproule, clerk. Copy deposited for defendant in error in clerk's office, U. S. circuit court, district of Montana.

The Answer of the Judges of the Circuit Court of the United States for the District of Montana to the Foregoing Writ.

The records and proceedings whereof mentioned is within made, with all things touching the same, we certify under the seal of our said court to the Supreme Court of the United States within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within we are commanded.

By the court:

[Seal United States Circuit Court, District of Montana, 1890.]

GEO. W. SPROULE, *Clerk.*

40½ And thereafter, to wit, on the 1st day of February, 1896, a bond on appeal was filed herein; which said bond on appeal is in words and figures as follows, to wit:

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

UNITED STATES OF AMERICA
vs.
L. I. ROSENCRANS.

Bond.

Know all men by these presents that we, L. I. Rosencrans, as principal, and J. B. Wilson, Robert E. Fisk, and Massena Bullard, as sureties, are held and firmly bound unto the United States of America in the sum of $1,500.00, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this first day of February, A. D. 1896.

The condition of this obligation is such that whereas, on the 30th day of January, A. D. 1896, by the consideration of the circuit court of said United States of America for the district of Montana, in a certain criminal case, to wit, a certain indictment against the above L. I. Rosencrans for unlawfully, wilfully, and feloniously destroying a certain letter containing a draft of fifty francs on or about the 13th of July, 1894, being criminal case No. 352, was charged and sentenced to one year at hard labor in the penitentiary at Deer Lodge, in the State and district of Montana; and whereas, upon the petition of the said L. I. Rosencrans, Hiram Knowles, district judge of the said United States — for the district of Montana, at Helena, within his district, has allowed a writ of error from the Supreme Court of the United States to the said circuit court upon the
41 judgment and sentence aforesaid, and has ordered that said writ of error operate as a stay of proceedings under the said

judgment and sentence, and that the said L. I. Rosencrans be admitted to bail in that behalf in the sum of $1,500 above mentioned; and whereas such writ of error has issued accordingly and the citation in that behalf has issued:

Now, if the said L. I. Rosencrans shall personally be and appear before the said circuit court on the first day of the next term thereof, to be held at the United States court-house, in Helena, in said district, on the — day of —— next, and from day to day thereafter, and at that and subsequent terms until the determination of said writ of error, and shall not at any of the terms of the said circuit court depart that court without leave thereof, and shall in case the judgment and sentence aforesaid be affirmed surrender himself to the custody of the marshal of said United States for the said district aforesaid, then this obligation shall be void; otherwise shall remain in full force.

L. I. ROSENCRANS. [SEAL.]
JNO. B. WILSON. [SEAL.]
ROBERT E. FISK. [SEAL.]
MASSENA BULLARD. [SEAL.]

UNITED STATES OF AMERICA, } ss:
District of Montana, }

J. B. Wilson, Robert E. Fisk, and Massena Bullard, being first duly sworn, each for himself says that he is one of the sureties on the foregoing bond; that he is worth the sum of $1,500 over and above all of his property exempt by law from execution.

JNO. B. WILSON.
ROBERT E. FISK.
MASSENA BULLARD.

Subscribed and sworn to before me this first day of February, A. D. 1896.

[SEAL.] ARTHUR J. CRAVEN,
Notary Public in and for the County of Lewis and Clarke.

42 (Endorsed:) (Title of court.) (Title of cause.) Bond. Filed Feb. 1, 1896. Geo. W. Sproule, clerk.

Also endorsed: I hereby approve the within bond and sureties. Hiram Knowles, judge.

UNITED STATES OF AMERICA, } ss:
District of Montana. }

I, George W. Sproule, clerk of said circuit court, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing volume, consisting of 42 pages, number-consecutively from 1 to 42, inclusive, is a true and complete transcript of the records, process, pleadings, orders, judgment, and other proceedings in said cause and of the whole thereof as appear from the original records and files of said court; and I do further certify and return that I have annexed to said transcript and included within said paging the original writ of error, with the return thereon.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Helena, in the district of Montana, this 26th day of March, A. D. 1896.

[Seal United States Circuit Court, District of Montana, 1890.]

GEO. W. SPROULE, *Clerk.*

Endorsed on cover: Case No. 16,298. Montana C. C. U. S. Term No., 522. L. I. Rosencrans, plaintiff in error, *vs.* The United States. Filed May 14th, 1896.

65-257

Office Supreme Court U. S.
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165-257

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

L. I. ROSENCRANS, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.
No. 522.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

L. I. ROSENCRANS, PLAINTIFF IN ERROR, } No. 522.
v.
THE UNITED STAEES.

MOTION TO ADVANCE.

The plaintiff in error, a railway postal clerk, was indicted in the circuit court of the United States for the district of Montana on March 18, 1895, for destroying registered mail matter in violation of section 5467 of the Revised Statutes. He was tried and on December 11, 1895, found guilty. On January 30, 1896, he was sentenced to imprisonment in the penitentiary for one year. He has been admitted to bail in the sum of $1,500, pending the decision of this court on his writ of error.

The Solicitor-General respectfully moves the court to advance the case on the docket and set it down for hearing on a day convenient to the court during the present term.

Notice of this motion has been served on the counsel for the plaintiff in error, and proof of service filed with the clerk.

HOLMES CONRAD,
Solicitor-General.

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65-257

Office Supreme Court, U. S.
FILED.
JAN 11 1897
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

165-257

L. I. ROSENCRANS,
PLAINTIFF IN ERROR,
vs.
THE UNITED STATES.

No. 522.

Error to the Circuit Court of the United States for the District of Montana.

BRIEF FOR PLAINTIFF IN ERROR.

THOMAS H. CARTER,
S. S. BURDETT,
Attorneys for Plaintiff in Error.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1897.

IN THE

Supreme Court of the United States.

October Term, 1896.

L. I. ROSENCRANS, Plaintiff in Error, *v.* THE UNITED STATES.	*No.* 522.

Error to the Circuit Court of the United States for the District of Montana.

Statement of the Case.

The plaintiff in error was indicted at the February term, 1895, of the Circuit Court of the United States for the District of Montana, Southern Division, he being charged with a violation of Section 5467 of the Revised Statutes of the United States. (Record, p. 1.)

The fourth count in the indictment charges that on the 13th day of July, 1894, the said Rosencrans "being then and there a person employed in the postal service of the United States, to wit, a postal railway clerk in the Postal Department of the United States, and in the discharge of the duties of that position on the Great Northern Railway, between the station of Havre, in the county of Choteau and the station of Kalispell, in the county of Flathead, in the State of Montana," destroyed a certain registered letter then in his possession, as such railway postal clerk, and being conveyed in the United States mails. (Record, p. 3.)

Upon the presentation, filing, and recording of this indictment, a bench warrant was issued, on March 18, 1895, commanding the marshal to bring the said Rosencrans before the court "at the United States court room, in the city of Butte," to answer the indictment. (Record, p. 5.)

The defendant having been arrested and admitted to bail, the Circuit Court, District of Montana, Southern Division, on March 26, 1895, on motion of the assistant United States attorney, ordered that the indictment be remitted to the Circuit Court of the United States for the District of Montana, holding its sessions at Helena, Lewis and Clark County, Montana (Record, 6), where the case was tried, and the defendant found guilty as charged in the fourth count of the indictment. (Record, p. 8.)

A motion for a new trial (Record, p. 16) and one in arrest of judgment (Record, p. 17) having been overruled, the defendant was sentenced to imprisonment in the penitentiary at hard labor for the term of one year.

The defendant thereupon sued out this writ of error. The errors assigned in connection with the petition for the writ of error are as follows:

"1. The grand jury had no jurisdiction to present the indictment.

"2. The indictment did not state whether it was found by the grand jury of the district of Montana, sitting at Helena, in said district, or at Butte, in said district.

"3. The court erred in denying and overruling defendant's motion in arrest of judgment, for that the count in the indictment upon which the jury found the defendant guilty does not state facts sufficient to constitute an offence against the laws of the United States.

"4. The contents of the letter set forth in the fourth count of the indictment were not proven as therein alleged."

BRIEF.

The main question for determination by the court on this writ of error is whether the Circuit Court of the United States for the District of Montana, Southern Division, sitting at Butte City, in the county of Silver Bow, Montana, had jurisdiction to entertain an indictment found and presented by the grand jury of said Circuit Court, Southern Division, charging the defendant with having, in July, 1894, committed an offence against the postal laws of the United States in a county in Montana other than in the county of Beverhead, the county of Madison, or the county of Silver Bow, and whether, said indictment having been so found, in the Southern Division of the District of Montana, that court had authority to remit the indictment to the Circuit Court for the District of Montana, sitting at Helena, Lewis and Clark county, Montana, for trial, and this without notice to the defendant; and whether the latter court had jurisdiction to try the defendant upon said indictment.

The Circuit and District Courts of the United States for the District of Montana were created by the twenty-first section of the act of Congress approved February 22, 1889, 25th Stats. 682.

That act provided that upon the admission of Montana into the Union that State should constitute a judicial district by the name of the District of Montana; that a circuit and district court should be held at the capital of the

State on the first Monday in April and the first Monday in November each year; that one grand jury and one petit jury should be summoned in both said circuit and district courts, and that the circuit and district courts and the judges thereof shall possess the same powers and jurisdiction and perform the same duties required to be performed by the other circuit and district courts and judges of the United States and shall be governed by the same laws and regulations.

Under this act the sessions of the courts were held at Helena, in Lewis and Clark county, Montana, that being the capital of the State.

By act approved July 20, 1892, Congress enacted as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the territory embraced within the following counties in the district of Montana, to wit: Beaverhead county, Madison county, and the county of Silver Bow, shall hereafter constitute and be known as the southern division of the district of Montana, and regular terms of the circuit and district courts of the United States for the said district may be held at Butte City, Montana, on the first Tuesday in February and the first Tuesday in September of each year, and the said courts so sitting at Butte shall have and exercise the same jurisdiction and authority in all civil actions, pleas or proceedings, and in all prosecutions, informations, indictments, or other criminal or penal proceedings conferred by the general laws on the district and circuit courts of the United States; and where one or more defendants in any civil cause shall reside in said division, and one or more defendants to such cause shall reside out of said division, but in said district, then the plaintiff may institute his action either in the court having the jurisdiction over the latter or in the said division. That this act shall not affect the jurisdiction, power, and authority of the courts as to actions, prosecutions, and proceedings already begun and pending in said district, but the same will proceed as though this act had not been passed, except that the court shall have power, which it may exercise at discretion, to transfer to the court in said division such of said pending actions, prosecutions and proceedings as might properly be begun therein under the provisions of this act."

27 Stats. 252.

Did Congress by this act of 1892 merely intend to permit the circuit and district courts in Montana to hold sessions at Butte as well as at Helena, or did it intend to erect and create in the district a division of the court, certainly so far as territorial limits are concerned, which should be confined to the three counties in the State which the statute mentions? If the former had been the sole purpose of Congress it would have been an easy thing for the act to have said so and gone no further; if, on the other hand, it was the intent and purpose to so divide the work of the courts as to let each—that is, the courts sitting at Helena and those to sit at Butte—exercise a jurisdiction, the one in the State outside of the counties of Beaverhead, Madison, and Silver Bow, and the other within those counties, the words employed in the statute are appropriate.

That Congress did not make Butte City merely a sitting place for the circuit and district courts in the District of Montana, is clear from the language of the act, which first creates the Southern Division of the District and then confers upon the circuit and district court sitting in that division the same jurisdiction and authority as is conferred by the general laws on the district and circuit courts of the United States. In an act which merely permitted the holding of the sessions of the courts at Butte as a part of the general district of Montana, no granting or conferring of jurisdiction would have been at all necessary, for the jurisdiction of the circuit and district courts, being coextensive under the act of 1889 with the boundaries of the State, could have been exercised at Butte as well as at Helena.

That Congress was dealing with the question of jurisdiction—the power to hear, try, and determine causes, whether civil or criminal—is clear from the concluding words of the statute which authorizes the transfer to the court in the Southern Division of all such actions, prosecutions, and proceedings pending in the district or circuit court for the district of Montana at the time of the passage of the act as might have been properly begun in said Southern Division under the provisions of the act.

It is to be observed that the act does not provide for the transfer of any action, prosecution, or proceeding commenced or instituted, after July 20, 1892, in the Southern Division of the District of Montana, to the circuit or district court sitting at Helena. Even the right of the court sitting at Helena to transfer to the Southern Division actions, prosecutions, or proceedings pending at the time of the enactment of the statute is limited and confined to those actions, prosecutions, and proceedings which might, under the provisions of the act, have been properly begun therein.

The prosecution in this case was begun in the Circuit Court for the District of Montana, Southern Division, on March 18, 1895, by the presentation, filing, and recording of an indictment found by the grand jury of that court charging the defendant, Rosencrans, with an offence against the postal laws of the United States alleged to have been committed on July 13, 1894, on the Great Northern Railway between the station of Havre, in the county of Choteau, and the station of Kalispell, in the county of Flathead, in the State and district of Montana.

It is respectfully submitted to the court that this indictment was found without authority of law; that the grand jury of the Circuit Court, Southern Division, sitting at Butte, had no power or authority to present the indictment, and that the court had no jurisdiction to receive it or to take action with respect to or cognizance of said indictment.

Neither the act of 1889 creating the circuit and district courts in the District of Montana, nor the act of 1892 creating the Southern Division of that district confers any special authority for the summoning of either a grand jury or a petit jury. It is true that the act of 1889 enacts that "only one grand jury and one petit jury shall be summoned in both said circuit and district courts," but that meant no more than that the grand jury in the circuit court should serve as the grand jury of the district court, and that the petit jury for the circuit court should also serve as the petit jury for the district court. So far as the courts for the district of Montana sitting at Helena are concerned, that provision of law still remains for their guidance, but it would, we submit, be a strained construction of the act of July 20, 1892, to hold that the grand jury for the courts at Helena must constitute the grand jury at Butte, or, *per contra*, that there being a separate grand jury for the court sitting at Helena, and one for the court sitting at Butte, either may present indictments for offences committed anywhere within the entire limits of the district of Montana.

The act of July 20, 1892, specially confers on the courts sitting in the Southern Division all the powers, jurisdiction, and authority possessed by the circuit and district courts under the general laws of the United States. The right to empanel grand juries in the courts of the United States is conferred by general laws, hence the circuit or district court of the United States for the district of Montana, Southern Division, being so specifically vested with the powers, jurisdiction, and authority referred to, is necessarily a separate tribunal, so far as the territorial limits of its jurisdiction are concerned, from the courts sitting at Helena. Its grand jury has no right to take cognizance or notice of crimes or misdemeanors committed or alleged to have been committed beyond the counties in the State which Congress has declared shall constitute the Southern Division of the district.

If, as is clear from the language of the statute, jurisdiction is conferred on the courts sitting at Butte in civil actions and in criminal proceedings, and that jurisdiction is limited to a prescribed territory, it cannot be exercised as to matters occurring outside of that territory.

That the lawmakers were guided by a purpose to confine the court sitting at Butte to the territorial limits prescribed by the act of 1892, is expressed in that provision of the statute which declares that the act shall not affect the jurisdiction, power, and authority of the courts as to actions, prosecutions, and proceedings already begun and pending in said district, but the same will proceed as though the act had not been passed.

There could have been no possible need or necessity for this saving clause in the statute unless, without it, the act would *proprio vigore* abate the actions, prosecutions, or proceedings referred to. Without such a clause in the act it is a serious question as to whether the jurisdiction of the circuit or district court sitting at Helena in a criminal proceeding instituted for an offence committed in either Beaverhead, Madison, or Silver Bow counties prior to July 20, 1892, would not have been ousted.

But the key-note to the true construction of this statute is found in the concluding words of the act, which authorize the courts sitting at Helena to transfer to the Southern Division such pending actions, prosecutions, and proceedings as might "*properly be begun*" in that division under the provisions of the act.

The act is absolutely silent in so far as is concerned any specification as to what prosecutions might "properly be begun" in the Southern Division of the district; but, having expressly granted to it the powers and jurisdiction of the circuit and district courts as conferred by the general law, it must necessarily follow as a matter of law that those powers and that jurisdiction must be exercised solely as to matters arising inside of the territorial limits of said division. That is to say, criminal proceedings for offences against the laws of the United States committed in either the counties of Beaverhead, Madison, or Silver Bow can only properly be begun in the court for the Southern Division sitting at Butte, while those for offences committed elsewhere in the District of Montana are left, to be begun, to the court sitting at Helena.

Unless this be the true construction of the act of 1892, it necessarily follows that, although Congress speaks of the beginning properly of prosecutions in the Southern Division under the provisions of the act, those words are meaningless, and that in the institution and trial of criminal cases the circuit and district courts sitting at Helena, and the circuit and district courts sitting at Butte, have concurrent jurisdiction over offences against the laws of the United States committed anywhere within the territorial limits of the District of Montana.

If, as we submit is the case, the court sitting at Butte had no power or jurisdiction to receive or record an indictment found by the grand jury for the Southern Division of the District of Montana, or to begin any proceeding against him, for an offence committed outside of the three counties named in the act of 1892, it had no power or right to remit that indictment to the court sitting at Helena for trial, nor had the latter court jurisdiction to try the defendant upon the indictment so found. The indictment being bad for want of power to find it where it was found and presented could not be cured by remitting it to Helena. If the court at Butte had jurisdiction to receive and record the indictment, as the record certifies was done, it had power and jurisdiction to try the defendant. With the power to indict and the power to try it was an invasion of the rights of the defendant, merely on the motion of the United States and without any notice whatever to the defendant to remit the case for trial to the court at Helena.

For these reasons alone it is submitted that the judgment of the court below must be reversed, and all proceedings under the indictment vacated.

II.

It is a primary principle of criminal procedure that an indictment must show on its face the particular court in which it was found, and also the place where the court was sitting.

This indictment shows that it was found in the Circuit Court of the United States, Ninth Judicial Circuit, District of Montana. By the act of February 22, 1889 (25 Stats. 682), the circuit and district courts of the United States for the district of Montana were required to sit at the capital of the State, which is at Helena, in Lewis and Clarke county. By the act of July 20, 1892 (27 Stats. 252), creating the southern division of the district, those courts were required to sit at Butte City, in Silver Bow county. Hence the absence in the indictment of any allegation as to the particular division of the Circuit Court in which said indictment was found, or the place where the court was sitting, renders the indictment fatally defective.

Wharton Crim. Prac. and Pl., 8th Ed., Sec. 91, and cases cited.

And this defect may be taken advantage of on motion in arrest of judgment.

Idem.

III.

The instrument designated as a "draft" in the fourth count of the indictment is not described according to its tenor or its legal effect. It is not alleged that it was an instrument for the payment of money; the drawer or the drawee or payee is not given. Enough should have been stated as to the character of the instrument in order that it might be determined from the indictment whether such instrument was a draft within the meaning of the statute. Besides, it is disclosed by the indictment that the grand jurors knew that "D. O. Mills & Co." were in some way related to the instrument as drawers, drawees, or payees; it was therefore incumbent upon them that said relation be set forth. It is also apparent that the grand jurors knew the relationship of the term "No. d.08250" to the draft. Having such knowledge, the indictment should have set forth a more particular description, and its absence is not excused by the words "a more particular description of which is to the grand jurors aforesaid unknown."

Wharton's Crim. Prac. and Pl., 8th Ed., Sec. 156, and cases there cited.

Again, the time and the place of the commission of the alleged offence are not charged or set out with sufficient definiteness.

The charging part of the fourth count is, "He, the said L. I. Rosencrans, did then and there unlawfully, wilfully, and feloniously destroy the said registered letter and the contents thereof," etc.

The following-named places had previously been designated in said count, and we now give them in the order of their remoteness from the charging part above quoted: Paris, France; Schweizerland; Sacramento; Great Northern Railway, between the station of Havre, in the county of Choteau, and the station of Kalispell, in the county of Flathead; State and District of Montana. Previously to the charging part of the indictment the following times had been mentioned: June 29, 1894; July 13, 1894.

Where an indictment alleges two or three different days and then charges the offence to have been "then and there" committed, it is bad for want of certainty; or if the antecedent averment is in any way ambiguous as to time and place, the indictment is defective because it is uncertain to which it refers.

Wharton's Crim. Prac. & Pl., Section 133.
Bishop's New Crim. Pro., Sec. 414.
1 Chitty's Crim. Law, p. 222.
U. S. *v.* Dow, Taney's C. C. Dec. 44.
State *v.* Hays, 24 Mo. 358.
Jane *v.* State, 3 Mo. 63.
State *v.* Hardwick, 2 Mo. 211.
State *v.* McCracken, 20 Mo. 211.
King *v.* Inhabitants of Moor, 2 East, 66.

Respectfully submitted.

THOMAS H. CARTER,
S. S. BURDETT,
Attorneys for the Plaintiff in Error.

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165-257

In the Supreme Court of the United States.

October Term, 1896.

L. I. Rosencrans, plaintiff in error,
v.
The United States.
No. 522.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MONTANA.

BRIEF FOR THE UNITED STATES.

The charging part of the fourth count is, "He, the said L. I. Rosecrans, did then and there unlawfully, wilfully, and feloniously destroy the said registered letter and the contents thereof," etc.

The following-named places had previously been designated in said count, and we now give them in the order of their remoteness from the charging part above quoted: Paris, France; Schweizerland; Sacramento; Great Northern Railway, between the station of Havre, in the county of Choteau, and the station of Kalispell, in the county of Flathead; State and District of Montana. Previously to the charging part of the indictment the following times had been mentioned: June 29, 1894; July 13, 1894.

Where an indictment alleges two or three different days and then charges the offence to have been "then and there" committed, it is bad for want of certainty; or if the antecedent averment is in any way ambiguous as to time and place, the indictment is defective because it is uncertain to which it refers.

Wharton's Crim. Prac. & Pl., Section 133.
Bishop's New Crim. Pro., Sec. 414.
1 Chitty's Crim. Law, p. 222.
U. S. *v.* Dow, Taney's C. C. Dec. 11.
State *v.* Hays, 24 Mo. 358.
Jane *v.* State, 3 Mo. 63.
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State *v.* McCracken, 20 Mo. 211.
King *v.* Inhabitants of Moor, 2 East, 66.

Respectfully submitted.

THOMAS H. CARTER.
S. S. BURDETT.
Attorneys for the Plaintiff in Error.

165-257

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MONTANA.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

L. I. ROSENCRANS, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.
No. 522.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MONTANA.

BRIEF FOR THE UNITED STATES.

This case is here on writ of error to the circuit court of the United States, ninth district of Montana, on a judgment rendered on the 13th of January, 1896, upon a verdict finding "the defendant guilty as charged in count No. 4 of said indictment and not guilty as charged in the remaining counts thereof, etc."

THE CASE.

The indictment contained five counts. The first count was as follows:

> The grand jurors of the United States of America, duly empaneled, sworn and charged to inquire within and for the district of Montana and true presentments make of all crimes committed against the

laws of the United States, within said district, upon their oaths and affirmations do find and present, etc.

The fourth count is as follows:

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that on the 13th day of July, in the year of our Lord one thousand eight hundred and ninety-four, in the State and district of Montana and within the jurisdiction of this court, L. I. Rosencrans (whose full name is to the grand jurors unknown), being then and there personally employed in the postal service of the United States, to wit, a railway postal clerk in the postal department of the United States, and in the discharge of the duties of that position, on the Great Northern Railway, between the station of Havre, in the county of Choteau, and the station of Kalispell, in the county of Flathead, in said State of Montana, a certain registered letter having come into his possession as such railway postal clerk, and which was intended to be and was then and there being conveyed by United States mail, and which said registered letter had been deposited in the mail at the United States post-office at Sacramento, in the county of Sacramento, in the State of California, on the 29th day of June in the year of our Lord one thousand eight hundred and ninety-four, and directed to Mrs. Emilie Heistans Greitzer, Gasthaus Atzel b. Einsiedeln, Ct. Schwizz, Schweizerland, which said registered letter contained a draft for fifty francs, D. O. Mills & Co., No. d 08250, on Paris, France (a more particular description of which is to the grand jurors aforesaid unknown), he, the said L. I. Rosencrans, did then and there unlawfully, willfully, and feloniously destroy the said registered letter and the contents thereof, which had come into his possession as aforesaid and which was intended to be

> and was then and there being conveyed by United States mail, as aforesaid, and which said registered letter and the contents thereof were not owned by the said L. I. Rosencrans, but were the property of the person to whom the same was directed, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

On the 16th day of January, 1896, defendant filed his motion in arrest of judgment.

On the 30th day of January, 1896 (Rec., 23), the court, having previously overruled the motion, sentenced the defendant to be confined in the penitentiary at Deer Lodge, in the State and district of Montana, at hard labor for the term of one year.

ASSIGNMENT OF ERRORS (REC., 24).

1. Because the grand jury had no jurisdiction to present the indictment.
2. Because the indictment did not state whether it was found by the grand jury of the district of Montana, sitting at Helena, in said district, or at Butte, in said district.
3. The court erred in denying and overruling defendant's motion in arrest of judgment, for that the count in the indictment upon which the jury found the defendant guilty does not state facts sufficient to constitute an offense against the laws of the United States.
4. Because the contents of the letter set forth in the fourth count of the indictment was not proven as therein alleged.

ARGUMENT.

The indictment appears to have been found under section 5467, Revised Statutes, which provides:

> Any person employed in any department of the postal service who shall secrete, embezzle, or destroy any letter, packet, bag, or mail of letters intrusted to him, or which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any mail carrier, mail messenger, route agent, letter carrier, or other person employed in any department of the postal service, * * * and which shall contain any * * * draft, check, warrant, * * * any bill of exchange, * * * any * * * draft, * * * contract, or agreement whatsoever for or relating to the payment of money, * * * or any other article of value or writing representing the same; any such person who shall steal or take any of the things aforesaid out of any letter, packet, bag, or mail of letters which shall have come into his possession, either in the regular course of his official duties, or in any other manner whatever, and provided the same shall not have been delivered to the party to whom it is directed, shall be punished by imprisonment at hard labor for not less than one year nor more than five years.

Section 5469, Revised Statutes, in terms covers the same offense set out in this indictment.

In *United States* v. *Lacher* (134 U. S., 624), the defendant was found guilty of embezzling a letter containing an article of value, under section 5467 of the Revised Statutes. The circuit court certified to this court two questions:

1. Whether an offense against the United States under section 5467, Revised Statutes, is charged in either the first or third count of the indictment.

2. Whether the embezzlement, by a person employed in a department of the postal service, of a letter intended to be conveyed by mail and contained an article of value, which shall have come into the possession of such person, is made an offense against the United States by section 5467, Revised Statutes; and whether any penalty is prescribed for such embezzlement by said section. In an exhaustive opinion by Mr. Chief Justice Fuller, the court disapproved the form in which the first question was certified, but answered the second question in the affirmative. (See *United States* v. *Delany*, 55 F. R., 475.)

And this disposes of the first assignment of error.

II.

The indictment states that the grand jurors were "duly empaneled, sworn, and charged to inquire within and for the district of Montana and true presentment make of all crimes committed against the laws of the United States within said district." It does not state at what point within the district the grand jury was sitting when it found the indictment; nor was it material that it should so state. The statute prescribes the places at which the terms of court shall be held and where the grand jury shall sit.

By act of July 20, 1892 (27 Stat., 252), it is provided that—

> * * * and regular terms of the circuit and district courts of the United States for said district may be held at Butte City, Montana, on the first Tuesday in February and the first Tuesday in September of each year.

The caption to the indictment shows that it was found at the February term, 1895 (Rec., 9), which would seem to answer the second assignment of error.

III.

This was to the action of the court in overruling defendant's motion in arrest of judgment, "for that the court in the indictment upon which the jury found the defendant guilty does not state facts sufficient to constitute an offense against the United States."

Looking to the terms of this assignment alone, it is sufficiently met by the opinion of this court in *United States* v. *Lacher, supra*. But the motion in arrest of judgment, as it appears in the record (pp. 21–23), appears to have been put on eighteen distinct grounds, the most of which have been disposed of by what has already been said.

1. As already seen, the facts stated in the indictment do constitute an offense against the laws of the United States.

2. The fourth count does not set out, it is true, the introductory paragraph, reciting when, where, and by what grand jury the indictment was found. It merely recites that the grand jurors *aforesaid*, upon their oaths and affirmations *aforesaid*—the "aforesaid" referring to the first count, where the statement is fully made.

In *Blitz* v. *United States* (153 U. S., 316), this court said:

> Though every count should appear upon the face of it to charge the defendant with a distinct offense,

yet one count may refer to matter in any other count so as to avoid unnecessary repetitions. As, for instance, to describe the defendant as "the said," etc.

3. It does not appear from this record that the grand jury was not competent.

4. It is distinctly alleged that the offense was committed by the defendant between Havre and Kalispell, in the State of Montana.

5. It does not appear whether the indictment was found by a grand jury of one division or of another, but by a grand jury having jurisdiction over the district in which it sat.

6. It is expressly charged that the defendant was "then and there a person employed in the postal service of the United States, to wit, a railway postal clerk," etc.

7 and 8. The draft is described according to its tenor and legal effect so far as its characteristic features were known to the grand jury. The indictment says that "a more particular description of which is to the grand jury aforesaid unknown."

9. The draft is described in the count with all the particularity which the knowledge or means of knowledge of the grand jury enabled them to give. It was that certain draft which was inclosed in a registered letter, mailed at Sacramento June 29, 1894, and directed to Mrs. Greitzler, Switzerland. The draft was for 50 francs. It was No. d 08250. It was drawn on Paris, France.

Let it be remembered that this is not an indictment for the embezzlement of a draft or check where the description of the draft must be so accurate and particular as to support a plea of former conviction or acquittal.

But the offense charged here is destroying a letter while being conveyed by mail, and the draft is referred to only because the destruction of such a letter when containing a draft for money is a different and graver offense than the destruction of a letter without such contents. The offense is not the destruction of the draft, but the destruction of the letter containing the draft.

The amount for which the draft was drawn does not affect the grade of the offense. It would have been the same if the draft was for one franc as if it was for a million.

The draft, however, in this case appears to have been described both by class and number. It was of class d, No. 08250 (if d refers to the class, which I assume it does).

The draft is alleged to have been in the letter and the letter in the possession of the defendant.

10. It is expressly stated that the county of Choteau and the county of Flathead were in the State of Montana.

11. It is expressly stated that Havre was in the county of Choteau and Kalispell in the county of Flathead, all in the State of Montana.

12. It is not alleged that the letter "did not come into the possession of the defendant," because it is alleged that it *did* come into his possession and that he destroyed it.

13. The registered letter is described as far as a letter can be described by one who sees only the outside of it; the address upon it is given in full.

14. The averment is "which said registered letter contained a draft for fifty francs," etc.

15. Nothing is said in the indictment of Paris France, whether it was an individual or a corporation. The count does aver that the draft was on Paris, France. The presence of the comma in the count and its absence in the motion in arrest (Rec., 22) answers this complaint.

16. It does not appear that the letter was delivered to the person to whom it was directed, because it does appear that it was destroyed by the defendant, who was charged with the duty of conveying it, and so could not have reached the person to whom it was directed.

17. The fourth count describes the draft by earmarks which are unequivocal and can not be mistaken; "d 08250" furnishes both the class and the number of the draft, of which number there could not be more than one. The offense charged here is destroying the letter containing the draft. The indictment is not specifically for the embezzlement of the draft. That the letter contained a draft aggravated the offense of destroying the letter. The draft is referred to in the indictment only for that purpose.

18. This has been already met.

HOLMES CONRAD,
Solicitor-General.

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